

On June 30, 2008, this Court issued an Order directing Plaintiff to provide the United States Marshal Service with proper directions of service for Defendants. [Document # 8]. After being informed by the United States Marshal Service (“U.S. Marshal”) that Plaintiff had not fully cooperated in its efforts to serve Defendants Doctor Jordano, DDS (“Jordano”), and Dental Technician Cindy (“Cindy”), this Court issued an Order on October 30, 2008, requiring Plaintiff to provide the U.S. Marshal with the necessary address information and documentation to allow said Defendants to be served. [Document # 32]. The Order provided further that Plaintiff’s failure to provide the necessary information to the U.S. Marshal on or before November 18, 2008, would result in the dismissal of Defendants Jordano and Cindy for failure to prosecute. A review of the docket entries in this case indicates that service has never been effectuated on said Defendants.

## **B. Discussion**

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends the dismissal of Defendants Jordano and Cindy from this case. For the last several months, Plaintiff has taken none of the necessary steps to prosecute this case against said Defendants. Further, Plaintiff has ignored an Order of this Court that expressly stated his case would be dismissed against said Defendants for failure to prosecute if he did not comply. Plaintiff is proceeding pro se and therefore bears all of the responsibility for any failure in the prosecution of his claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties.

## **III CONCLUSION**

For the foregoing reasons, it is respectfully recommended that Defendants Doctor Jordano, DDS and Dental Technician Cindy be dismissed from this case due to Plaintiff's failure to prosecute.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4 B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to timely file objections may constitute a

waiver of some appellate rights. See e.g., Nara v. Frank, 488 F.3d 187 (3d Cir. 2007).

S/Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
Chief U.S. Magistrate Judge

Dated: February 20, 2009

cc: The Honorable Sean J. McLaughlin  
United States District Judge